82-6451

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

NO._____

WILLIAM LEDFORD WALTERS, PETITIONER

V.

UNITED STATES OF AMERICA, RESPONDENT

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

STEVEN R. JAEGER
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P.O. Box 222
Covington, KY 41012
(606) 491-2323
Attorney for Petitioner

QUESTION PRESENTED

DOES THE DOCTRINE OF LENITY APPLY TO PETITIONER TO BAR HIS CONVICTIONS UNDER 18 U.S.C. §371 and 18 U.S.C. §842 et.seq. INSOFAR AS THERE IS A LESSER PUNISHMENT STATUTE WHICH WOULD EQUALLY APPLY?

PARTIES BELOW

The parties to the proceeding before the United States Court of Appeals for the Sixth Circuit were WILLIAM LEDFORD WALTERS, the Petitioner herein, Case No. 81-5860, ROBERT EARL MILLER, Case No. 81-5861, and VICTOR FOREST SCHARSTEIN, Case No. 82-5859.

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NO._____

WILLIAM LEDFORD WALTERS, PETITIONER

V.

UNITED STATES OF AMERICA, RESPONDENT

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

The Petitioner, WILLIAM LEDFORD WALTERS, respectfully prays that a Writ of Certiorari issue to review the Judgment of the United States Court of Appeals for the Sixth Circuit entered in the above case on December 3, 1982, affirming the criminal conviction of the Petitioner by the United States District Court

for the Eastern District of Kentucky for the offenses of conspiring to manufacture, deal and store explosive materials without a license and of manufacturing and dealing in explosive materials without a license in violation of 18 USC §§371 and 842(a)(i).

OPINION BELOW

The opinion and decision of the United States Court of Appeals for the Sixth Circuit, in the case styled United States of America v. William Ledford Walters (81-5860), Robert Earl Miller (81-5861) and Victor Forest Scharstein (82-5859), was filed on December 3, 1982. The opinion and decision is contained in the appendix filed by Counsel for the Petitioner.

JURISDICTIONAL STATEMENT

Jurisdiction of the United States District Court for the Eastern District of Kentucky herein is based on 18 USC §3231.

Jurisdiction of the United States Court of Appeals for the Sixth Circuit is based upon 28 USC §1291.

Jurisdiction of this Court is based on 28 USC §1254 and §2101, as well as Part V of th Rules of this Court. Co-Defendant ROBERT MILLER timely filed a Motion for Rehearing in the United States Court of Appeals, which Petition was overruled by that Court on January 24, 1983. This Petition is being filed within sixty (60) days of the rendering of the final judgment in the case as required by Supreme Court Rule 20.

CONSTITUTIONAL PROVISIONS INVOLVED

The constitutional provisions involved in the case are Article III, §1, giving this Court the supervisory power over questions of federal law ruled upon by the inferior federal Courts. This case also involves the due process provisions of the Fifth Amendment to the United States Constitution.

STATUTES INVOLVED

The statutes involved in this case are: Title 15 U.S.C. §§1263 and 1264 and Title 18 U.S.C. §§842 and 844. These statutes are included in the Appendix attached hereto.

STATEMENT OF THE CASE

On July 8, 1981, the Petitioner, WILLIAM LEDFORD WALTERS, was indicted by a Federal Grand Jury of the United States District Court, Eastern District of Kentucky, charging him in Count One with conspiring to violate 18 USC §842(a)(I), by knowingly engaging in the business of manufacturing and dealing in explosive materials without a license, and with conspiring to violate 18 USC §842(a)(3)(A), by knowingly transporting and shipping and causing to be transported and shipped in interstate commerce explosive materials without a license, and with conspiring t o violate 18 USC §842 (j), by unlawfully storing explosive materials, said conspiracy being in violation of Title 18 USC §371. Count Two of the indictment charged the Petitioner with violating 18 USC §842(a)(1) and 844(a), by knowingly engaging in the business of manufacturing and dealing in explosive materials without a license issued under the provisions of 18 USC §§841-848. Indicted with the Petitioner in Count One were VICTOR FOREST

SCHARSTEIN, ROBERT EARL MILLER, ELLEN VIRGINIA ORTA, DAVID JEFFERY HERALD and TERRI HERALD. Indicted with the Petitioner in Count Two were VICTOR FOREST SCHARSTEIN, DAVID JEFFERY HERALD TERRI HERALD and ELLEN VIRGINIA ORTA. In addition, VICTOR FOREST SCHARSTEIN and DAVID JEFFERY HERALD were indicted for knowingly transporting and shipping explosive materials in interstate commerce, in violation of 18 USC §842(a)(3)(A). TERRI HERALD was also charged with knowingly storing explosive materials in violation of 18 USC §842(j).

On August 31, 1981, DAVID JEFFERY HERALD and ELLEN VIRGINIA ORTA appeared before the Hon. William O. Bertlesman and entered a plea of guilty to the conspiracy count of the indictment. TERRI HERALD entered a plea of guilty to the offense of illegally storing explosive materials, the misdemeanor count. Sentencing was withheld.

Petitioner Walters, together with Defendants SCHARSTEIN and MILLER, was tried before a jury in the Eastern District of Kentucky, Covington, Division, from October 20, 1981, until

October 27, 1981, the Honorable William O. Bertlesman, Judge presiding.

Motions of the Petitioner for dismissal and a directed verdict of acquittal, filed October 26, 1981, were denied.

The Petitioner was convicted of conspiring to manufacture and deal in explosive materials without a license in violation of 18 USC §371 and knowingly engaging in the business of manufacturing and dealing in explosive materials in violation of 18 USC §842(a)(1) and §844 (a), said verdict being rendered on October 27, 1981.

Petitioner filed a Motion for new trial on November 9, 1981.

On November 19, 1981, the Petitioner was sentenced to five (5) years imprisonment on Count One and Ten (10) years imprisonment on Count Two, said terms to run concurrently for a total of ten (10) years. On November 20, 1981, the Motion for new trial was denied.

The Petitioner timely filed his Notice of Appeal, also on November 19, 1981.

After arguments before the United States Court of Appeals for the Sixth Circuit, that Court affirmed Petitioner's conviction on December 3, 1982. Co-Defendant MILLER filed a Petition for Rehearing, which was overruled on January 24, 1983.

REASONS FOR GRANTING THE WRIT

THE DOCTRINE OF LENTIY APPLIES TO THE FACTS OF THIS CASE, THUS BARRING PETITIONER'S CONVICTION UNDER THE STATUTES REQUIRING HARSHER PENALTIES.

During the course of the government's prosecution of Petitioner, the United States attempted to prove that he conspired to manufacture deal, transport and store explosive materials. The United States also attempted to prove that he actually engaged in the business of manufacturing and dealing in explosive materials. Throughout this case, both at the pre-trial stage and during the evidence at trial, the United States through its witnesses continually referred to the explosive material as M-80 and M-100 firecrackers containing a perchlorate mixture, commonly known as flash powder. (T.R.,P.69,P355, P.520). In order to determine whether or not a presecution such as this can be successful, it is necessary to

determine whether M-80 or M-100 firecrackers are prohibited under Title 18 USC §841 et.seq. An analysis of the statutes in question, the Federal regulations enacted thereunder, and the legislative history make it clear that the manufacture, distribution, transportation and storage of such fireworks have been excluded from the prohibition set out under 18 USC §841.

Title 18 USC §841 et. seq., and the regulations promulgated thereunder do not deal with either M-80 or M-100 firecrackers and do not prohibit or ban those items. Section 841(d) mandates that the Secretary of the Treasury shall annually publish in the Federal Registry a list of all explosives banned under the act, (Emphasis supplied). Webster's Third New International Dictionary defines "ban" as meaning "to prohibit especially by legal means..." A copy of the Treasury Secretary's list of explosive materials as published in Volume 45 #155 of the Federal Registry, Page 52976 (Friday, August 8, 1980), was introduced as Exhibit 55 for the Government. Nowhere does it ban either M-80 or M-100 fireworks as explosive materials. The Trial Court ruled at trial, however, that those items were explosive

materials within the meaning of the act.

In its opinion of January 22, 1983, the Trial Court seems to base its ruling on the propostion that these materials are banned because they "...were a devise or chemical compound mixture which had the common purpose to function by explosion." Further, the Trial Court found that the powder contained in the devices was an explosive powder known as a "perchlorate explosive mixture." This reasoning is clearly erroneous based upon the testimony at trial. Agent Dale Beam stated that perchlorate explosive materials were components of fireworks other than M-80 and M-100 firecrackers. (T.R., P. 123-123). George Peterson, an ATF Chemist, testified that the perchlorate mixture known as flash powder was an ingredient of common fireworks. (T.R., P.370-371). Roy Parker, the government's own expert, stated that perchlorate mixtures were used throughout the fireworks industry. (T.R., P.536). Finally, Mr. Parker stated that the components of flash powder were readily available on the open market (T.R.,P. 538). Thus, it can be seen that the

perchlorate mixtures, which are regulated by various departments of the government, are not banned. Rather, Title 15 USC §1261 et.seq., known as the Federal Hazardous Substance Act, prohibits the introduction into interstate commerce of such hazardous substances.

The Secretary of Health and Welfare is mandated to publish in the Code of Federal Regulations a list of hazardous substances; 16 CFR §1500 et. seq., specifically lists as banned goods or substances, M-80 and M-100 firecrackers as follows:

> Fireworks devices intended to produce audible effects including but not limited to cherry bombs, M-80's, salutes, silver salutes, and other large fireworks designed to produce audible effects and including kits and components intended to produce such fireworks if the audible effect is produced by a charge of more than two grains of pyrotechnic composition. 16 CFR § 1500.17(a)(3).

Further, the Court's attention is directed to the case of UNITED STATES v. CHALAIRE, 316 F. Supp. 543 (E.D.La. 1970), wherein the U.S. District Court for the Eastern District of Louisiana concluded that "... cherry bombs and silver kings were banned by the Federal Hazardous

Substance Act from being introduced into the channels of interstate commerce." Although CHALAIRE does not specifically deal with M-80's and M-100's, silver kings and cherry bombs are Class B fireworks which contain flash powder (perchlorate explosive mixtures), the very same type of explosive which the government produced at this trial. Further, in the Chalaire opinion, the Court stated at page 547:

> Silver kings and cherry bombs are toys within the meaning of the Federal Hazardous Substance Act. The Act itself expressly excludes Class C (common) fireworks, but not Class B fireworks. Also, the legislative history of the act clearly states that Congress intended to include silver kings and cherry bombs (Class B fireworks) within the definition of toy.

Finally, this prosecution was based on the premise that the activities of the Petitioner were carried on without a license. Nevertheless, throughout the trial, the United States contended that those same activities could never have been licensed. (T.R., P. 512, P. 539). If in fact the complained of activities were not subject to the licensing requirements, then the rhetorical question is asked: How could the activities for which this indictment was brought be

within the purview of that statute? Thus, the indictment was not properly brought under the correct statute.

Because 18 USC ss841-848 are silent as to the type of fireworks that are the subject matter in this case, because the Federal Regulations as set out in Government's Exhibit 55 do not list such firecrackers on the list of banned explosive materials, and because perchlorate mixtures are not banned but are, in fact, regulated by other governmental departments, those sections in no way prohibit the manufacture, assembly, or storage of M-80 or M-100 fireworks. If prohibited such conduct is prohibited under the Federal Hazardous Substance Act as set out in Title 15 of the United States Code and this prosecution should have been brought thereunder.

Because both 18 US §841 et. seq., and 15 USC §1261 et. seq., regulate the same conduct, the Court should have applied the doctrine of Lenity in the dispositon of the Motion for directed verdict of acquittal. To do so the Court should have considered not only the wording of the related statutes but the congressional intent in enacting the statutes.

The doctrine of lenity is an ancient principle of common law recognized throughout time by the United States Supreme Court. It is a rule of statutory construction stating that ambiguity concerning the ambit of criminal statutes is to be resolved in favor of lenity; that is, where the intention of Congress is not clear from the act itself and reasonable minds might differ as to its intention, the Court will adopt the less harsh meaning. The Court's attention is drawn to the annotation entitled Supreme Court's Views as to the Rule of Lenity in the Construction of Criminal Statutes, 62 L. Ed. 2d 827 (1979).

The rule of lenity does not apply unless there is a genuine ambiguity in a criminal statute that cannot be resolved by consideration of the statutory language and legislative history. An ambiguity is said to arise "where the legislature has enacted two or more provisinns or statutes which appear to be inconsistent." (Emphasis mine) 73 Am.Jur.2d §195. Although it is Petitioner's primary contention that it is clear that 18 USC §841 et. seq., do not prohibit the conduct charged, at the very least the exist-

ence of 18 USC § 841 et. seq., together with 15 USC § 1261 et. seq., creates an ambiguity which cannot be resolved by a mere reading of the statutes and pertinent legislative history.

This ambiguity arises by the failure of 18 USC § 841 et. seq., and the promulgated regulations thereunder, to specifically delineate M-80 and M-100 firecrackers as covered thereunder. There is no question, however, as to whether 15 USC § 1261 et. seq., and the subsequent regulations, prohibit the distribution and transportation of those same fireworks. The prohibition is specifically set forth in 16 CFR 1500.1/(a)(3), as argued in the preceding section of this brief.

"Ambiguous" is defined in Webster's Unabridged Dictionary, 2d Edition, as:

> Having two or more possible meaning being of uncertain signification; susceptible of different interpretations; hence, obscure; not clear; not definite; uncertain or vague.

Whenever two statutes overlap, and the government contends that one proscribes inferentially the same conduct that the other specifically prohibits, ambiguity must arise. Thus, within the doctrine of lenity is the concept that where overlapping

statutes prohibit the same conduct and proscribe different punishment, and one is less harsh than the other, the conflict must be resolved by applying that statute which imposes the least harsh punishment. PRINCE v. UNITED STATES, 352 U.S. 322, 370 (1957). Further, in REWIS v. UNITED STATES, 401 U.S. 808 (1971) at 812 the Supreme Court states:

> Ambiguity concerning the ambit of a criminal statute should be resolved in favor of lenity.

See also: BELL v. UNITED STATES, 349 U.S. 81 (1955). In UNITED STATES v. CULBERT, 435 U.S. 371 (1978) at 379, the Court once again stated:

> It is true that ambiguity concerning the ambit of criminal statutes should be resolved in favor of lenity.

Although the Court in CULBERT failed to apply the doctrine of lenity it did so on the basis that the two statutes were not ambiguousas to one another. That is not the situation in the present case, as both Title 18 and Title 15 attempt to regulate flash powder mixtures.

The Government has elected to indict this Petitioner under the provisions of 18 USC §841 et. seq. A close reading of that statute

reveals that it fails to deal with the manufacture, storage, or distribution of M-80 or M-100 fireworks. If 18 USC s841 et. seq. sanction the introduction of fireworks, which the Petitioner states is not the case, it does so only by inference. However, 15 USC s1261 and 16 CFR 1500.17 specifically mention the prohibitions against M-80 and M-100 fireworks. Thus there are two overlapping statutes susceptible of more than one interpretation.

The Trial Court acknowledged that ambiguities in criminal statutes must be resolved in favor of lenity. It went on to find that for the doctrine to apply the ambiguity must exist in the type of conduct prohibited or in the length of sentence to be imposed. Finding that no ambiguity existed in the case before the Court, the Trial Court and the United States relied upon UNITED STATES v. BATCHELDER, 422 U.S. 114 (1979). Petitioner contends that this emphasis was misplaced and that the Batchelder decision can be distinguished from the within cause. Batchelder states that the Court will find no ambiguity where Congress has clearly stated its intent. Congress

stated no intent to regulate the manufacture of M-80 or M-100 firecrackers in the passage of 18 USC §§841-848.

A reading of the legislative history of both acts shows that firecrackers were never considered when 18 USC §841 was before the appropriate congressional bodies. M-80's and M-100's had already been banned for at least four years prior to the passage of the act. However, the history of 15 USC §1261 "clearly shows that Congress intended to include (Class B Fireworks)." UNITED STATES v. CHALAIRE, 316 F. Supp. 543, 547 (E.D.La. 1970). Not one recorded word can be found that ever mentioned the items herein under consideration in the legislative history of Title XI of Public Law 91-452. Furthermore, the appellate decisions which have been rendered under 18 US §841 et. seq., deal only with the intentional bombings of facilities affecting interstate commerce. The explosives involved with the reported cases are such items as pipe bombs, dynamite, and "Molotov" cocktails. Fireworks prosecutions can nowhere be found undertaken under Title 18 USC §841, but are rather found under Title 15.

In U.S. v. PORTER, 591 F. 2d 1048 (5th Cir. 1979), it was held:

> Since this is the first prosecution under this statute strictly against the prosecution and in favor of the accused. If there is a fair doubt as to whether a defendant's conduct is embraced in this prohibition, the policy of lenity requires that the doubt be resolved in favor of the accused.

Here the government, through creativity and a special prosecutorial enthusiasm, attempts to bootstrap otherwise minor criminal conduct into a major felony. This cannot be done, even considering the "tragic" explosion that occurred at the fireworks factory. The explosion is simply not relevant or material to any charge that was, or might have been brought against Petitioner.

Where the matter is not free from doubt, the issues must be resolved in favor of lenity. WHALEN v. UNITED STATES, 445 U.S. 684 (1980). A citizen must be properly put on notice of what the law requires of him if he is to be held accountable for disobedience of those requirements. If that law is so ambiguous that

it does not properly inform the citizen of what is expected of him in the form of lawful behavior, he must constitutionally be protected from overzealousness of the prosecutor. We can only afford this Petitioner his constitutional protection by interpreting these statutes in accordance with the evident intent of the Congress in enacting them. Nowhere in the legislative history of the statutes in question can the Court conclude that Congress intended to make sentencing under Title 18 US §841 an alternative to sentencing under 15 USC §1261, an act which the government is attemptin to do in this case.

By applying the doctrine of lenity and by looking at the legislative intent behind both 18 USC §841 and 15 USC §1261, the ambiguity present in these overlapping statutes must be resolved in favor of the Petitioner. Thus, no prosecution can be had against the Petitioner under the provisions of 18 USC §841 et. seq. To allow such a prosecution is to permit the United States Attorney to put himself in place of the Congress and the Court, proceed with his own interpretation of the clearly conflicting statutes

and enhance the alleged offense from what Congress clearly intended to be a misdemeanor into a felony.

CONCLUSION

WHEREFORE, Petitioner Walters, for the reasons expresseed herein, respectfully requests that this Court issue a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit and for such other and further relief as to this Court may seem proper.

Respectfully submitted,

Steven R. Jaeger

STEVEN R. JAEGER
Attorney for Petitioner
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P.O. Box 222
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(606) 491-2323

CERTIFICATE OF SERVICE

I hereby certify that on the 21 day of MARCH, 1983, I mailed true copies of the foregoing Petition for Writ of Certiorari to the Solicitor General of the United States of America, Washington, D.C.; to the Hon. Louis De Falaise, United States Attorney for the Eastern District of Kentucky, P.O. Box 1490, Lexington, Kentucky 40591-1490; to the Hon. Hugh D. Kranitz, Attorney for Defendant Robert Miller, 107 South Fourth, St. Joseph, MO 64501; and to the Hon. Lee M. Nation, NATION AND CURLEY, 402 Seville Square, 500 Nichola Road, Kansas City, MO 64112; and to the Sixth Circuit Court of Appeals, Cincinnati, Ohio 45202.

Steven R. Jaeger

STEVEN R. JAEGER
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NO. 81-5860
NO. 81-5861
NO. 82-5359

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

FILED

DEC 3 1982

JOHN P. HEHMAN, Clerk

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

WILLIAM LEDFORD WALTERS (81-5860)

ROBERT EARL MILLER (81-5861)

VICTOR FOREST SCHARSTEIN (82-5359)

Defendants-Appellants

ORDER

BEFORE: LIVELY, Circuit Judge; PHILLIPS and BROWN, Senior Circuit Judges.

The appellant in No. 81-5860, William Ledford Walters, was convicted at a jury trial of conspiracy to manufacture, deal, transport, and store explosive materials without a license and of manufacturing and dealing in explosive materials without a license in violation of 18 U.S.C. §§371 and 842(a)(1). The appellant in No. 82-5359, Victor Forest Scharstein, was also convicted by the jury of violating 18 U.S.C. §§371 and 842(a)(1) and in addition of transporting explosive materials without a license in violation of 18 U.S.C. §842(a)(3)(A). The defendant in No. 81-5861, Robert Earl Miller, was indicted in count one only of conspiracy to manufacture, deal, transport and store explosive materials without a license. The jury found Miller guilty of conspiring to engage in the business of manufacturing and dealing in explosive materials

without a license and of conspiring to transport and ship such materials in interstate commerce, but he was found not guilty of conspiring to unlawfully store explosive materials. All defendants have appealed and have raised numerous issues in briefs and oral arguments.

The court has carefully considered the issues raised by each of the appellants and the responses of the Assistant United States Attorney. The court has also noted that the trial judge, Honorable William O. Bertelsman, considered many of these issues and filed orders in disposing of them. We agree with Judge Bertelsman that the conduct disclosed by the evidence is prohibited by 18 U.S.C. §842 and that the defendants were properly charged thereunder. We also agree with the ruling of the trial judge that the defendant Scharstein was not denied effective assistance of counsel at the trial. We conclude however, that the evidence was not sufficient to support a verdict beyond a reasonable doubt as to the defendant Miller with respect to the charge that he conspired to manufacture and deal in explosives without a license. The evidence was sufficient, however, to support the verdict that the defendant Miller conspired to transport and ship or cause to be transported and shipped explosive materials in interstate commerce.

Upon consideration of the entire record on appeal together with the briefs and oral arguments of counsel the court considers that the appellants Walters and Scharstein have identified no reversible error in the proceedings and that the defendant Miller has demonstrated error only in his conviction for engaging in the business of manufacturing or dealing in explosive materials.

The convictions of William Ledford Walters and Victor Forest Scharstein are hereby affirmed. The conviction of Robert Earl Miller for conspiring to transport and ship or causing to be transported and shipped explosive materials in interstate commerce is affirmed, and the conviction for engaging in the business of manufacturing or dealing in explosive materials is vacated. Since the judgment and commitment order identifies only the conviction for conspiring to manufacture and deal in explosive materials, the case is remanded to the district court for re-sentencing in the light of this court's conclusions.

ENTERED BY ORDER OF THE COURT

Clerk

NO. 81-5861

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

FIL

JAN 2

JOHN P. HEHN

STATES OF AMERICA

Plaintiff-Appellee

ORDER

T EARL MILLER

Defendant-Appellant

/

E; LIVELY, Circuit Judge; and PHILLIPS and BROWN, Senior Circuit

No judge in active service on this court having requested that the for rehearing filed herein by the defendant-appellant Robert Ear be heard en banc, the petition has been referred to the panel whic the appeal. Upon consideration, the court concludes that the issue in the petition for rehearing were fully considered upon the origina ion and decision of this case and that rehearing is not required.

Accordingly, the petition for rehearing is denied.

ENTERED BY ORDER OF THE COURT

John P. Hehman

Clerk

APPENDIX

18 U.S.C. §842. Unlawful acts

"(a) It shall be unlawful for any person —

"(1) to engage in the business of importing, manufacturing, or dealing in explosive materials without a license issued under this chapter;

*****

"(3) other than a licensee or permittee knowingly —

(A) to transport, ship, cause to be transported, or receive in interstate or foreign commerce any explosive materials, except that a person who lawfully purchases explosive materials from a licensee in a State contiguous to the State in which the purchaser resides may ship, transport, or cause to be transported such explosive materials to the State in which he resides and may receive such explosive materials in the State in which he resides, if such transportation shipment, or receipt is permitted by the law of the State in which he resides; or

*****

"(j) It shall be unlawful for any person to store any explosive material in a manner not in conformity with regulations promulgated by the Secretary. In promulgating such regulations, the Secretary shall take into consideration the class, type, and quantity of explosive materials to be stored, as well as the standards of safety and security recognized in the explosives industry."

18 U.S.C. §844. Penalties

"(a) Any person who violates subsections (a) through (i) of section 842 of this chapter shall be fined not more than $10,000 or imprisoned not more than ten years, or both."

15 U.S.C. §1263. Prohibited acts

"The following acts and the causing thereof are prohibited:

"(a) The introduction or delivery for introduction into interstate commerce of any misbranded hazardous substance or banned hazardous substance."

15 U.S.C. §1264. Penalties; exceptions

"(a) Any person who violates any of the provisions of section 1263 of this title shall be guilty of a misdemeanor and shall on conviction thereof be subject to a fine of not more than $500 or to imprisonment for not more than ninety days, or both; but for offenses committed with intent to defraud or mislead, or for second and subsequent offenses, the penalty shall be imprisonment for not more than one year, or a fine of not more than $3,000, or both such imprisonment and fine."

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

NO. 82-6451

WILLIAM LEDFORD WALTERS, PETITIONER

V.

UNITED STATES OF AMERICA, RESPONDENT

MOTION TO PROCEED IN FORMA PAUPERIS

* ** ** ** ** ** ** ** ** ** ** ** *

Comes now the Petitioner, WILLIAM LEDFORD WALTERS, by and through Counsel, and pursuant to the laws of the United States, moves this Court for Leave to Proceed in Forma Pauperis on his Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

In support of this Motion an Affidavit of Counsel is attached hereto and made a part hereof as if fully set out herein.

In support of this Motion, an Affidavit of the Petitioner, WILLIAM LEDFORD WALTERS, will be supplied to this Court upon its receipt from the Petitioner who is incarcerated at the Federal Correctional Institution at Sand Stone, Minnesota.

WHEREFORE, this Court is respectfully requested to enter an Order allowing this Petitioner to proceed on his Petition for a Writ of Certiorari in forma pauperis.

Respectfully submitted,

Steven R. Jaeger

STEVEN R. JAEGER
Attorney for Petitioner
111 Park Place
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(606) 491-2323

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

NO._____

WILLIAM LEDFORD WALTERS, PETITIONER

V.

UNITED STATES OF AMERICA, RESPONDENT

A F F I D A V I T

Comes now the Affiant, STEVEN R. JAEGER, and after first being duly cautioned and sworn, states as follows:

1. That the Affiant is the Attorney of Record for the Petitioner, WILLIAM LEDFORD WALTERS, in the within captioned matter.

2. That the Affiant was trial Counsel and Appellate Counsel for the Petitioner in the Sixth Circuit Court of Appeals.

3. That the Affiant is aware that the Petitioner is presently incarcerated at the Federal Correctional Institution at Sand Stone, Minnesota.

4. That the Affiant is prosecuting the Petitioners' request for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit without fee for his services in that matter.

5. That it is the opinion of the Affiant that the Petitioner qualifies to proceed on his Petition for Certiorari in

forma pauperis.

Further Affiant sayeth naught,

Steven R. Jaeger
STEVEN R. JAEGER

COMMONWEALTH OF KENTUCKY
SS
COUNTY OF KENTON

SUBSCRIBED AND SWORN TO before me, a Notary Public, this 22nd day of March, 1983, by the Affiant, STEVEN R. JAEGER.

Marlene Trumbull Cummins
NOTARY PUBLIC
STATE-AT-LARGE

My commission expires:
March 19, 1986

CERTIFICATE OF SERVICE

I, STEVEN R. JAEGER, hereby certify that on the 22 day of MARCH, 1983, I mailed true copies of the foregoing Petition for Writ of Certiorari and Motions and Affidavits to proceed in forma pauperis to the Solicitor General of the United States of America, Department of Justice, Washington, D.C. 20530; to the Hon. Louis DeFalaise, United States Attorney for the Eatern District of Kentucky, P.O. Box 1490, Lexington, Kentucky 40591-1490; to the Hon. Hugh D, Kranitz, Attorney for Defendant Robert Miller, 107 South Fourth Street, St. Joseph, MO 64501; and to the Hon. Lee M. Nation, NATION AND CURLEY, 402 Seville Square, 500 Nichols Road, Kansas, MO 64112; and to the Sixth Circuit Court of Appeals, Cincinnati, Ohio 45202. I certify that the document has been served upon all parties required to be served by placing true copies of the Motions, Affidavits, and Petition in the United States mail, postage prepaid.

Steven R. Jaeger

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